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EXAMINER

WUJCIAK, ALFRED J

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/655,443
Filing Date: September 04, 2003
Appellant(s): DEAN ET AL.

Ronald P. Dean et al.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/20/05 appealing from the Office action mailed 3/23/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Double Patenting

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The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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Claims 1-11 and 15-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,616,106.

Although the conflicting claims are not identical, they are not patentably distinct from each other because US Patent # 6,616,106 teaches a bracket system comprising a plurality of chassis with slots; the chassis brackets (203) are attached to a chassis base (201); a mounting bracket assembly (100) with a plurality of tapered mounting bracket assembly slots (101) and a plurality of horizontally-protruding pegs (102); and a plurality of tabs (202) on the chassis base; the

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mounting bracket includes a handle (103) engageable with rotation pegs (205) on the chassis bracket; engagement of the chassis bracket slots and the mounting bracket pegs provide a positive stop for the mounting bracket assembly; engagement of the tabs and the mounting bracket assembly slots provide a positive stop for the mounting bracket assembly; the chassis bracket are positioned laterally to the mounting bracket assembly so that the mounting bracket pegs frictionally engage the chassis bracket slots when a mounting bracket handle frictionally engage the chassis bracket slots when mounting bracket handle frictionally engages rotation pegs on the chassis bracket; the mounting bracket assembly slots frictionally engage the tabs; the mounting bracket pegs are offset; at least one of the chassis brackets supports two devices; the mounting bracket assembly will frictionally engage the chassis bracket without a device present; the mounting bracket assembly can be moved when the mounting bracket handle is not engaged with the chassis bracket rotation pegs, the mounting bracket assembly movement allowing the mounting bracket to be aligned.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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Claims 1, 3-4, 6, 8, 10, 15 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent # 5,564,804 to Gonzalez et al. in view of US Patent # 5,940,265 to Ho.

Gonzalez teaches a bracket system (figure 4) comprising a plurality of chassis bracket (104,106) attached to chassis base (102) and a mounting bracket assembly (108) with slot (216,224). The chassis base comprises a tab (402). The chassis bracket comprises a slot (40) and the mounting bracket assembly includes a horizontally protruding peg (304). The engagement of the tab and bracket assembly slot provide a positive stop for the mounting bracket assembly.

Gonzalez teaches the mounting bracket assembly with slot and the chassis base with tab but fails to teach the slot is tapered and the chassis base having plurality of tabs. Ho teaches the slot (16) is tapered and plurality of tabs (21,22). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified Gonzalez's slot with tapered and added plurality of tabs to chassis base as taught by Ho to provide convenience for accessing the tabs into the tapered slots.

In regard to claims 3, 8, and 19-20 Gonzalez teaches the bracket having slot and bracket assembly having horizontally protruding peg but fails to teach the bracket having more than one slot and the bracket assembly having more than one offset horizontally protruding peg. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added more than one slot and horizontally protruding peg to the bracket and bracket assembly to provide additional support for stabilizing the bracket and bracket assembly together.

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Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gonzalez in view of Ho and in further view of US Patent # 5,828,547 to Francovich et al.

Gonzalez teaches the chassis brackets but fails to teach the chassis brackets supports two devices. Francovich et al. teaches the chassis bracket (figure 10) supporting two devices (figure 11, 92 and 93). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified Gonzalez's chassis brackets to support two devices as taught by Francovich et al. to provide additional device to be secured in the chassis brackets.

Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gonzalez et al. in view of US Patent # 4,947,661 to Yoshida.

Gonzalez et al. teaches the bracket system comprising means for vertical alignment (214) of the subassembly (108) providing means for positive stop (220). The system includes means for horizontal alignment (216) of the subassembly having means for positive stop (the side edge of element 216). The system includes means for securing (218) the subassembly to the chassis. The securing means further comprises a means for locking (304) the subassembly to the chassis. The securing means also providing means for positive stop (edge of 304 that is secured within slot of 404) for subassembly.

Gonzalez et al. teaches the means for securing but fails to teach the means for securing comprising a rotatable handle means. Yoshida teaches the means for securing (3) comprising a rotatable handle means (1). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added the rotatable handle means to Gonzalez et al.'s

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means for securing as taught by Yoshida to provide convenience for releasing the subassembly from the chassis.

(10) Response to Argument

In response to appellant's argument on pages 5-6 that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Gonzalez and Ho both teach analogous art for supporting the disk drive bracket in a computer chassis and that they are designed to be removable attached to the computer. Gonzalez and Ho both teach mounting bracket assembly slot for engaging with the tabs on the chassis base.

With respect to appellant's argument on pages 6-7 stating that Ho teaches single hook hole 16 and not a plurality of tapered mounting bracket assembly slots. Since the base reference (Gonzalez et al. 5,564,804) teaches plurality of slots (216 and 224) and that it is an obvious to have modified the base reference plurality of slots with Ho's tapered slot to provide convenience for accessing the tab into the slot and lock therein.

On page 9 of appellant's argument stating that Gonzalez fails to teach means for vertical alignment and that element 214. Since element 214 is a projection part of the bottom of mounting bracket, it provide height to the bracket when resting on surface. The specification (col. 4, lines 39-42) in Gonzalez's reference states that it is used for stacking on the other

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brackets (108). This is considered as means for vertical alignment to stack up the bracket in a vertical direction.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

A. Joseph Wujciak III

AW

Conferees:

Robert Olszewski

RO

Pete Cuomo

PC